

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SHERRY GOLDAMMER, DONALD GERHARD,  
RON VEILLON, CARMEN THOMAS, and  
DIANA RHODES, on behalf of themselves  
and all others similarly situated,

CV 03-1749-BR

OPINION AND ORDER

Plaintiffs,

v.

ANN VENEMAN, in her official capacity  
as Secretary of the United States  
Department of Agriculture; ART GARCIA,  
in his official capacity as Administrator  
of the Rural Housing Service; LYNN  
SCHOESSLER, in his official capacity as  
State Director of the Oregon Rural  
Development Office; DBSI/TRI IV, an Idaho  
limited partnership; DBSI REALTY CORPORATION,  
an Idaho corporation; NORTHWEST REAL ESTATE  
CAPITAL CORPORATION, an Idaho nonprofit  
corporation; FOREST HILLS INVESTORS OF  
COQUILLE, OREGON, LTD., an Oregon limited  
partnership; JADIN INVESTMENTS LIMITED,  
an Oregon limited partnership; NORSEMEN  
VILLAGE, an Oregon limited partnership; and  
DBSI/TRI VII, an Idaho limited partnership,

Defendants.

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Oregon, Ltd.; Jadin Investments Limited; Norsemen  
Village; and DBSI/TRI VII

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Garcia (hereinafter referred to as Federal  
Defendants)

**BROWN, Judge.**

This matter comes before the Court on Federal Defendants'

Motion for Summary Judgment (#82) and DBSI and Northwest Defendants' Motion for Summary Judgment (#70).

For the reasons that follow, the Court **GRANTS** both Motions. Accordingly, the Court dismisses with prejudice Plaintiff's First, Second, and Third Claims and remands Plaintiff's remaining state law claims to state court.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

The factual and procedural background of this action is set forth in the Court's September 29, 2004, Opinion and Order, and is well known to the parties. The Court, therefore, does not repeat it here.

#### **STANDARDS**

Fed. R. Civ. P. 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show the absence of an issue of material fact. *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9<sup>th</sup> Cir. 2002). In response to a properly supported motion for summary judgment, the nonmoving party must go beyond the pleadings and show there is a genuine issue of material fact for trial. *Id.*

An issue of fact is genuine "'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"

*Villiarmo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9<sup>th</sup> Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The court must draw all reasonable inferences in favor of the nonmoving party. *Id.*

## **DISCUSSION**

### **I. Plaintiffs' Federal Claims**

Plaintiffs' First, Second, and Third Claims turn on the applicability of the Emergency Low Income Housing Preservation Act (ELIHPA), 42 U.S.C. § 1472(c). Plaintiffs admit the facts material to the applicability of ELIHPA are not in dispute.

In its September 29, 2004, Opinion and Order, the Court concluded ELIHPA's prepayment restrictions cannot be used to prevent enforcement of the government's contracts with property owners. The Court's conclusion was mandated by the Ninth Circuit's decision in *Kimberly Assoc. v. United States*, 261 F.3d 864 (9<sup>th</sup> Cir. 2001). The Court finds Plaintiffs have not offered any compelling reason for the Court to depart from its prior analysis.

Plaintiffs' First, Second, and Third Claims all depend on Plaintiffs' allegation that ELIHPA applies to the contracts at issue. Accordingly, for the reasons set forth in its September 29, 2004, Opinion and Order, the Court concludes Plaintiffs cannot prevail on these three Claims, and, therefore,

Defendants are entitled to summary judgment.

## **II. Plaintiffs' State-Law Claims**

Plaintiffs also assert two state-law claims against DBSI Realty Corporation and its successors-in-interest for violation of rental agreements and the Oregon Landlord and Tenant Act.

Under 28 U.S.C. § 1367(a), a district court with original jurisdiction over any civil action "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." The district court, however, may decline to exercise supplemental jurisdiction over pendent state law claims if it has dismissed all claims over which the district court has original jurisdiction. 28 U.S.C. § 1367(c)(3). When determining whether to exercise supplemental jurisdiction or to remand pendent state law claims under § 1367(c)(3), the district court considers the "underlying objectives . . . of [judicial] economy, convenience, fairness, and comity." *Executive Software North America, Inc. v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 24 F.3d 1545, 1557 (9<sup>th</sup> Cir. 1994). "'[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.'" *Acri v. Varian Assoc., Inc.*, 114

F.3d 999, 1001 (9<sup>th</sup> Cir. 1997)(quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)). Under § 1367(c)(3), the district court is not required to articulate on the record the specific reasons for declining to exercise jurisdiction. *San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 478-79 (9<sup>th</sup> Cir. 1998).

This Court has granted Defendants' Motions for Summary Judgment on Plaintiffs' three federal claims. Plaintiffs' remaining state statutory and common law claims involve the interpretation of state law, and, therefore, the Court finds those claims are best resolved by a state trial court. As noted, the Court may remand pendent state-law claims if all federal claims are dismissed before trial. Little, if any, substantive activity concerning the state-law claims has occurred. Moreover, nothing suggests an exceptional or extraordinary circumstance to justify the exercise of federal jurisdiction over these claims in the absence of Plaintiffs' unsuccessful federal claims. This Court is a court of limited jurisdiction, and, as a matter of comity, should defer to the state court on issues that are clearly within the state court's jurisdiction and expertise.

Accordingly, in the exercise of its discretion under 28 U.S.C. § 1367(c)(3), this Court declines to assert supplemental jurisdiction over Plaintiffs' pendent state law claims and remands this action to state court.

### CONCLUSION

For these reasons, the Court **GRANTS** Federal Defendants' Motion for Summary Judgment (#82) and **GRANTS** DBSI and Northwest Defendants' Motion for Summary Judgment (#70). The Court **DISMISSES with prejudice** Plaintiffs' First, Second, and Third Claims and **REMANDS** Plaintiffs' remaining state-law claims to state court.

IT IS SO ORDERED.

DATED this 26<sup>th</sup> day of May, 2005.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge